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October 4, 2002

VIA HAND DELIVERY

Mr. Brant Levine
Office of the General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, DC 20463

Re: MUR 5127

Dear Mr. Levine:

This letter responds on behalf of the Democratic Party of Illinois ("DPI" or "the Party"), its Treasurer, Michael Kasper, and its Executive Director, Timothy Mapes (hereinafter referred to as "Respondents") to the Commission's notification, dated July 29, 2002, that it has found "reason to believe" that the Respondents violated certain provisions of the Federal Election Campaign Act ("FECA" or "Act"). Accompanying this letter are an affidavit from Mr. Mapes and documents submitted in response to the Questions and Requests for Production of Documents served on the same date on the Respondents.

I. INTRODUCTION

The Commission is seeking information and legal analysis bearing on the Complainant's contention that because Mr. Mapes served as Chief of Staff to the Speaker of the Illinois House, while also acting as Executive Director to the DPI, the State of Illinois was effectively subsidizing his work for the Party. The Complainant did not identify any factual basis for this contention. Nor did he suggest that any provision of the Act or rule of the Commission compelled such a conclusion. The Complaint simply states that if Mr. Mapes held both positions, but was compensated only by the State, then it followed somehow that the State was paying him also for his Party work. In the words of the Complaint:

Specifically, the State of Illinois is paying the salary of the Executive Director of the Democratic Party of Illinois, Timothy Mapes. Mr. Mapes also happens to be the Chief of Staff of the Speaker of the House, Michael J. Madigan.

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Thus, the State of Illinois is paying for Mr. Mapes to be the Democratic Party of Illinois Executive Director.

Compl. at 1 (emphasis added).

The “thus” suggests that the third sentence follows, by operation of logic, the first two, when it obviously does not. It is on that basis that the DPI responded earlier that the Complaint failed even to state a claim cognizable under the Act. It did not appear reasonable for a federal inquiry into this claim to be based on an assertion lacking not only any evidentiary but also any legal foundation. On this basis, the Party expressed its concern that a complaint so fundamentally deficient could force parties and their volunteers to “defend themselves from frivolous, unsubstantiated claims.” Letter from Michael J. Kasper, Fletcher, Topol & O’Brien, P.C., to Jeff S. Jordan, Supervisory Attorney, Federal Election Commission (Jan. 3, 2001).

In the Factual and Legal Analysis (“FLA”) accompanying the Commission’s reason to believe notification, it found that DPI’s response was “awkward and ambiguous,” omitting any “affirmative claim[]” that Mr. Mapes was a bona fide volunteer for DPI. FLA at 6. The absence of any clear statement to that effect seemed to leave, in the words of the FLA, a “critical factual void.” Id. at 7.

Today the Respondents will fill that void, providing the information necessary to establish that the Complaint is without merit, including a sworn statement from Mr. Mapes confirming that he served in a volunteer capacity and documents that further support that statement. It was not Respondents’ intention to leave a “void” in the first instance, but rather to call attention to the emptiness of the original Complaint. As demonstrated below and in the documents produced today, Mr. Mapes was a bona fide volunteer for DPI, discharging the duties of an Executive Director without charge. Nothing in the law compelled him to demand or receive a salary for his services; that he did not do so does not give rise to any reasonable belief that the State of Illinois supplied the compensation on behalf of the DPI.

Moreover, the “case” to the contrary propounded by the Complaint is inconsistent with the FECA’s encouragement and protection of volunteer activities. The Act does not carry a presumption against volunteer activity, but rather favors it. A variety of provisions of the Act and Commission rules are structured to provide broad scope and flexibility for these activities. The exceptions for volunteer activities

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apply equally to senior positions, as they do to volunteers who help with the distribution of envelopes or the licking of stamps.

Respondents also point out that while, as the Commission has noted, the Act is properly read to limit and compel the disclosure of "contributions" by States, the Commission has approached these cases with caution. Even in instances in which the alleged expenditures involved the unreimbursed use of facilities, not volunteer personal time, the Commission has not taken formal enforcement action against a State. While the Commission has offered little commentary on its actions in such matters, the Commission may have acted out of an appropriate concern with avoiding over-intrusive involvement in state governmental and political process in the absence of clear and compelling evidence of misconduct.

II. FACTUAL BACKGROUND

The Respondents today submit an affidavit from Mr. Mapes, establishing by his sworn testimony that he was and is a bona fide volunteer providing uncompensated personal services to the DPI as Executive Director. See Aff. of Timothy Mapes, Exhibit A, at ¶ 4. Mr. Mapes carries out a variety of activities for DPI in that capacity, including developing Party programs in support of various candidates and issues.¹ Id.

Mr. Mapes describes in his affidavit his preparation of time sheets reflecting the time he committed to his official, compensated duties for the State of Illinois. See Exhibit A at ¶ 5. Those timesheets, for the period January 1, 1998 to the present, are produced today. See Time Records, Exhibit C.

Those time sheets document the attention Mr. Mapes paid to the boundaries between his government service and his volunteer political activities. The time sheets show how he "clocked in" and "clocked out" at various times during the day and week, when his volunteer political activities required it. See Exhibit C; see also Daily

¹ We also attach, as called for by the Commission Questions and Requests for Production of Documents for the Democratic Party of Illinois, a list of all employees or consultants of the Party from 1998 to the present. See Payroll Information, Exhibit B. Included therein is information concerning Wendy Cohen and Barbara Guttman, the two prior Executive Directors of the Party. See id.

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Calendar sheets, Exhibit D.² The time records also show that Mr. Mapes maintains a highly active schedule, which included days with a wide range of activities and very different—and sometimes very long—hours in the office. This schedule has enabled Mr. Mapes to manage both his paid and volunteer positions, assisting the DPI while providing more than the required time for his official duties.

Moreover, Mr. Mapes also testifies, and the records of the State reflect, that on one occasion, when his political activities became sufficiently consuming, he took an unpaid leave of absence from his compensated government position. That leave, from October 19-October 31, 1998, allowed Mr. Mapes to assist DPI and its candidates with intense campaign activity prior to the general election in that year.³

This record establishes the falsity of the claims and insinuations of the Complaint. A review of the record will show that Mr. Mapes as a general practice carefully accounted for his government-paid time, and that he took leaves as required to assure that his government service and political activities did not conflict.

The Respondents also note the Complainant's suggestion that, in some way, DPI could not have raised any substantial sum of money without a full-time, compensated Executive Director. While Mr. Mapes assisted the Party on a limited basis with fundraising, he did so in a volunteer capacity. Those who are familiar with fundraising by party committees across the country know that much fundraising support is provided for parties and candidates on a volunteer basis. In fact, the Finance Chairs of many major party organizations are volunteers.

² The Respondents did not conduct an exhaustive examination of these records in preparation of this response. They did not have the time to do so on the current schedule, and did not believe one to be necessary to establish the larger and conclusive point. It is noted that the daily calendar is only a rough guide to the activities of Mr. Mapes on a particular day. Some of events and activities are noted on his calendar for informational purposes only, or they were scheduled and not removed from the schedule when circumstances changed. For this reason, the appearance of these events in these records does not conclusively establish that Mr. Mapes attended any particular one. As a result, a complete reconstruction of his time is not possible on the basis of these records; nor is it necessary.

³ Also produced today are copies of reimbursements of Mr. Mapes by DPI. Reimbursements, Exhibit E. While these are not relevant to the discussion of Mr. Mapes's volunteer activities, they are responsive to the Commission Questions and Requests for Production of Documents for the Democratic Party of Illinois.

III. LEGAL DISCUSSION

A. The Act grants broad allowances for individual volunteer activities in political campaigns.

At bottom, this case implicates the Act's allowance for individual volunteer activities on behalf of candidates and parties. The Complainant wishes to introduce a note of suspicion into the arrangement for Mr. Mapes' service to the DPI, based on his senior position with the Party and his concurrent compensated service to the State. In the Complainant's apparent view, a certain "level" of volunteer activities is cause for concern, and appropriately the basis for aggressive Commission inquiry. The Act and Commission rules do not support this pinched reading of the allowance for volunteer activities. On the contrary, they provide for the most expansive reading of their scope.

The Commission correctly set forth the appropriate standards for volunteer activity in its FLA:

The Act and the regulations contain exceptions to the definition of contribution. First, individual volunteer activity does not qualify as an exception. Second, with regard to paying for the personal services of another who performs services to a committee, no contribution results if an hourly or salaried employee makes up the time spent working on political activity within a reasonable amount of time. Similarly, no contribution results if the employee is paid on a commission or piecework basis or if the employee uses vacation time to render services to a committee.

FLA at 1-2 (citations omitted).

Commission rules do not only sanction volunteer activities as an "exception" to the scope of "contributions," 11 C.F.R. § 100.7(b)(3), they also bolster this exception in variety of ways as a means of encouraging this form of political activity. Hence, the rules do not compel volunteers to limit their volunteer activities to after-hours, weekend or vacation times, but allow such activities during the workday so long as the time so spent is "made up" to the employer. 11 C.F.R. § 100.7(a)(3)(i). The volunteer may also, without restriction, use his or her real or personal property to

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support volunteer efforts, 11 C.F.R. § 100.7(b)(4), and may also support them with the expenditure of personal funds for routine living expenses, 11 C.F.R. § 100.8(b)(22). An exception is also made for the payment by volunteers for the use of church or community rooms. 11 C.F.R. § 100.7(b)(5). Moreover, the contribution limit has been adjusted for volunteers, allowing them to absorb an additional \$1,000 per election, per candidate, for the cost of food, beverages and invitations for events hosted by volunteers in their personal residences. 11 C.F.R. § 100.7(b)(6).

That this volunteer exception is intended for broad application is apparent from its active application to the activities of corporate employees. The prohibition on corporate contributions and expenditures is a core provision of the Act, 2 U.S.C. § 441b, and traditionally a priority for Commission enforcement. Still the Commission has provided for certain uses of corporate facilities by corporate employees and shareholders acting as "volunteers." 11 C.F.R. § 114.9(a). Those uses are expressly denied to other "persons" making use of those facilities, for example, to produce materials for candidates. 11 C.F.R. § 114.9(d). This allowance for volunteer activities by those connected with corporations has been extended by Advisory Opinion to a corporate representative appearing in campaign commercials, Advisory Opinions 1984-43 and 1978-77, and to corporate payments of fringe benefits for short periods to employees on unpaid leave for political activities, Advisory Opinion 1992-3.

The law establishes in this way broad flexibility for those seeking to volunteer their personal services to candidates and parties. There is no warrant for distinguishing, as does the Complainant in this case, the senior level volunteer from the more junior one. In fact, the Act does not clearly allow for candidates to be paid salaries from their campaign committees, which means that most candidates must maintain regular employment for as long as possible while campaigning for office. See, e.g., Advisory Opinion 1992-1 (Commission could not reach a majority decision as to whether a candidate's campaign committee could pay the candidate a salary). It hardly stands to reason that it would be suspicious for an Executive Director of a party to volunteer his time, including time supporting fundraising, while such volunteering is allowed—perhaps by law required—of *the candidate* for a federal office. In any event, not only does the law not recognize any such distinction between

types of volunteers, but also any such distinction would introduce a limitation entirely at odds with the wide latitude afforded this kind of personal activity.⁴

The Commission should approach the disposition of this case with these principles in mind. At the heart of this case is the conduct of bona fide volunteer activity under the Act, and the theory of the Complaint, which would suggest a limitation of that right or at least the burden of wide-ranging investigation without cause, should be rejected.

B. The Commission has historically approached with caution allegations of improper state political activity and should also do so here.

The Commission has tread carefully in addressing claims that States have made unlawful contributions and expenditures. A review of these cases is instructive in underscoring the apparent concern of the Commission with intruding into state governmental processes without a compelling basis.

Certain of these claims against States have involved the use of state facilities, such as helicopters, MUR 1686, and aircraft, MUR 3986. In those cases, the Commission found a violation but still took no action. In MUR 1686, the Commission concluded that once payment was made to the State for all trips taken by the candidate, no action need be taken. General Counsel's Report, Jan. 15, 1985, at 8. This was a noteworthy result, because in other contexts, as the Commission has repeatedly stated, remedial action does not insulate the respondent from enforcement proceedings and liability. In MUR 3986, the Commission also found a violation, but concluded that the long time that had passed since the violation and the dollar amount involved counseled in favor of dispensing with further enforcement action. General Counsel's Report, March 26, 1997, at 7.

⁴ The Commission's approach to volunteer personal time is appropriately contrasted with the very different case of the use of physical resources. By and large, the rules impose more specific requirements on the use of corporate and other facilities that might raise the prospect of "in-kind contributions." See 11 C.F.R. § 114.9(c), (d); 11 C.F.R. 114.2(f).

Similar restraint has been exercised in instances when the allegation involved, as here, the use of paid employee time. MUR 2074, which turned on the use of paid state legislative staff in a United States Senate race, was closed without further action. The Commission, in that time not bound to provide statements of reasons, provided none on the record.

A more recent case concerned a state legislative employee's allegation that she had been ordered, as part of her regular duties, to provide assistance to a congressional candidate supported by her employer. MUR 5082. The Commission's course of action also reflected considerable restraint and caution in dealing with allegations of this kind. The Commission concluded that while the employee swore that she had been directed to perform campaign work at government expense, the denial of her employer (and specifically, her direct supervisor, who was the employer's wife) presented two significant barriers to enforcement.

First, the Commission held that the State should not be held liable unless it could be established to have "known of the activities." Second General Counsel's Report, April 23, 2002, at 13. The Commission stated that the "value" of any alleged contribution "comes from the payment of the employee's salary." First General Counsel's Report, March 26, 2001, at 8. Hence, without clear evidence of the State's complicity in the alleged illegal contribution, a violation involving the State would not be found.

Second, the Commission expressed some reservations about the scope of the investigation that would be required to ferret out evidence of political misuse of state resources. The Commission would have had to conduct extensive interviews and related inquiry to determine whether a representative of the State had the authority to direct the misuse of state funds and the intent to do so.⁵

It is thus apparent that the Commission, while retaining the authority to investigate egregious instances of state subsidies for federal election activity, will respond cautiously to these kinds of claims to avoid undue entanglement in state governmental processes. The Commission's self-restraint is consistent with caution of the same nature exhibited by various branches of the government called upon to

⁵ The Commission also noted that generally, in matters of this kind, "state employees [are] not named as respondents," but instead the Commission generally pursues only the State and recipient political committee. First General Counsel's Report, March 26, 2001, at 8 n.3.

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investigate the "political" activities of another. See, e.g., Winpisinger v. Watson, 628 F.2d 133, 139-40 (D.C. 1980), cert. denied 446 U.S. 929 (1980); Joseph v. Cannon, 642 F.2d 1373, 1379, 1384 (D.C. 1981), cert. denied 455 U.S. 999 (1982); Public Citizen, Inc. v. Simon, 539 F.2d 211, 217 (D.C. 1976).

While this line of cases involves restraint of the federal judiciary in dealing with such claims against the federal executive and legislative branches, the cases are appropriately considered in evaluating a call for the federal government to assess the "political" intent and activities of a State and its employees. This is especially the case in this matter, where the Complainant has produced no evidence of the bald assertions of the Complaint, and the Respondents have produced substantial evidence to refute those unsupported assertions.

IV. CONCLUSION

For the foregoing reasons, the Complaint should be dismissed, and the matter closed.

Very truly yours,



Robert F. Bauer

Judith L. Corley

Rebecca H. Gordon

Counsel for Respondents

**FEDERAL ELECTION COMMISSION
MATTER UNDER REVIEW 5127**

AFFIDAVIT OF TIMOTHY MAPES

1. My name is Timothy Mapes. I am the Chief of Staff to the Speaker of the Illinois House of Representatives, working from the main office located at Room 300, State Capitol Building, Springfield, IL. In that position, I perform all the duties generally associated with the position of Chief of Staff, such as set policies for the office under the general direction of the Speaker, supervise the operation of the Speaker's staff, provide advice and counsel to the Speaker, and carry out such other duties as the Speaker may assign. This is a compensated position, and my current salary is \$129,500.

2. As Chief of Staff, on average I work well in excess of the designated 35-hour work week. It is expected that I will work the hours required to perform all the duties assigned to me, and that I will effectively address, for whatever time is required, all unexpected or additional demands that develop in the course of a day, week or month. Under policies instituted in the Speaker's office, I prepare weekly time records reflecting the time spent working on my official duties for each day of that week.

3. Should I need leave, by way of vacation or other earned leave time, or unpaid leave, to address other demands, including demands on me as Executive Director of the Democratic Party of Illinois as described below, I am responsible for determining when I need leave time and charging against the leave time available.

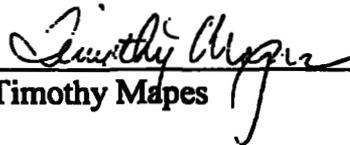
4. I also volunteer my time and services to the Democratic Party of Illinois ("DPI" or "the Party") in the capacity of Executive Director. In this position, I act under the general supervision of the Chairman of the Party in supervising its operations, including the development of its programs of support for candidates and issues it supports and the implementation of those programs in coordination with those candidates and Democrats throughout the State of Illinois. I also occasionally perform fundraising services for the Party during my volunteer time on behalf of the Party.

5. From time to time, I have been reimbursed for expenses incurred on behalf of the Party, and on two occasions, have been compensated by the Party for my services. The first occurred during a limited period (from October 19 to October 31, 1998). The second instance involved a bonus paid after the 2000 election (and included a bonus paid not only to me, but to numerous other State Party workers as well). Except for these two occurrences, the position has been a volunteer position.

and I have no agreement for, nor expectation of, other compensation for my continuing services to the Party as Executive Director.

6. My volunteer services for DPI require me to take time during the workday from time to time to attend meetings or events. It is not possible to reliably estimate how often I do so, or for what periods of time on average; whenever I do so, however, the long hours required for the position I hold with the Office of the Speaker afford me the immediate opportunity, which I take, to make up any time away from the office and my official compensated duties. From time to time I have also charged time against earned leave, or taken unpaid leave, to volunteer for DPI, which is reflected in the records, including timesheets, and further reply produced my counsel to the Commission.

I declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct. Executed on October 2, 2002.



Timothy Mapes